

**DECISION**



*Has further*  
*26043*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-204339

DATE: November 16, 1981

MATTER OF: Schuster Engineering, Inc.

**DIGEST:**

1. Where IFB provided that bidders are deemed to acknowledge receipt of any amendment indicated by certified mail records or telephone company records, but bidder acknowledged amendment by signing a formal receipt when amendment was received in person, absence of an acknowledgment of the amendment in the manner prescribed by the IFB was a failure in form and not substance.
2. Where authority of person signing receipt for amendment is questioned after bid opening, president of company can confirm authority after the bid opening.

Schuster Engineering, Inc. (Schuster), protests the award to Hankins Construction Co. (Hankins) under Veterans Administration (VA) invitation for bids (IFB) on project No. 657-064/071 because Hankins did not acknowledge amendment No. 2 on the bid form. Schuster claims approximately \$400,000 in bid preparation and related costs.

A representative of Hankins signed a formal receipt for amendment No. 2 several days before the opening of bids when the amendment was received in person at the issuing office, which was not the contracting office. One method provided in the IFB for acknowledging receipt of the amendment was to make the acknowledgment in the bid. The IFB also indicated that bidders are deemed to acknowledge receipt of any amendments indicated by certified mail records or telegraph company records.

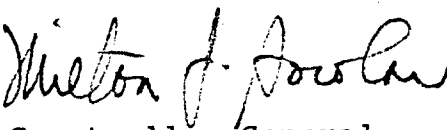
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Although Hankins did not acknowledge receipt of the amendment in the bid and did not receive the amendment by certified mail or telegram, it did acknowledge receipt of the amendment in writing prior to the bid opening. While the manner of receipt did not meet the specific provision of the IFB, it did conform with the general purpose which was to provide evidence extraneous to the bid and outside the control of the bidder to establish that the amendment was received prior to the submission of the bid. Thus, the absence of an acknowledgment of the amendment in the manner prescribed by the IFB was a failure in form rather than in substance.

Our decision in B-151188, May 8, 1963, cited by Schuster for a contrary result, is distinguishable from the immediate case. In that decision the IFB provided for acknowledgment of amendments only in the bid itself. Thus, we were concerned that the bidder by signing a receipt for an amendment did not agree to be bound by the amendment. Here the IFB made it clear that the bidder would be bound by any amendment which certified mail or telegram company records indicated the bidder received. Although there are no certified mail or telegram company receipts in this case, the execution of a formal receipt for the amendment establishes that the bidder received the amendment.

Schuster questions whether the person who signed the receipt for amendment No. 2 on July 29, 1981, had the authority to bind Hankins to the terms of the amendment since the Hankins' bid was signed by another person. The president of Hankins has confirmed that the person who signed the receipt had the authority to contractually bind the company since February 5, 1981, when the authority was granted by the Hankins' Board of Directors. The confirmation of authority to contractually bind a corporate bidder can be provided by an officer of the corporation after the bid opening. Paragon Energy Corporation, B-202654, August 6, 1981, 81-2 CPD 101.

Accordingly, the protest is denied. Since the protest is denied, the claim for bid preparation and related costs is denied also. Systems Group Associates, Inc., B-198889, May 6, 1981, 81-1 CPD 349.

*for*   
Comptroller General  
of the United States